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Knut Haber-Land-Schlosser

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EXAMINER

KIM, TAE K

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/517,018
Filing Date: July 25, 2005
Appellant(s): HABER-LAND-SCHLOSSER ET AL.

Phouphanomketh Ditthavong
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 26, 2010 appealing from the Office action mailed August 4, 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1 – 11, 13, 14, 16, 19 – 22, 25, and 26

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2001/0030624

Schwoegler

12/2000

Kehr, Roger, et. al, "Look Ma', My Homepage is Mobile!" Personal Technologies, Springer, London, GB, vol. 4, no. 4, (2000), pp. 217-220

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 7, 8, 11, 19 – 21, 25 and 26 rejected under 35 U.S.C. 103(a) as being unpatentable over the published thesis “Look Ma’, My Homepage is Mobile!,” written by Roger Kehr and Andreas Zeidler (hereinafter “Kehr”), in view of U.S. Appl. 2001/0030624, filed by Bruce Schwoegler (hereinafter “Schwoegler”).

1. Regarding Claims 1, 2, 25, and 26, Kehr discloses a method for:

automatically determining information about environmental conditions of a mobile telephone device [Pgs. 1 – 3; the homepage is dynamically adapted to the environment a mobile user is currently in, without interaction from the mobile user (automatically), such as location (country, network, area) and text configuration notifying the new and updated status of the user or the user’s mobile device]; and

automatically adapting a mobile homepage in accordance with said determined information about said environmental conditions of said mobile telephone device [Pgs. 1 – 3; discloses a mobile homepage system built on top of an implementation of small web server inside a SIM of a mobile communication device, where the homepage is dynamically adapted to the environment a mobile user is currently in, without interaction from the mobile user (automatically), such as location (country, network, area) and text configuration notifying the new and updated status of the user or the user’s mobile device (evaluating determined environment information with regard to different environment information and adapting the homepage in accordance with a result of the evaluation)].

Kehr further discloses that the homepage is constructed from a template that uses information returned by the mobile phone to set variables and for template substitution [Pg. 3].

Kehr, however, does not specifically disclose that the environmental conditions also indicate actual weather conditions of the location of a mobile telephone device.

Schwoegler discloses a system and method of providing individualized, location specific weather information to subscribers on wireless mobile devices [Para. 0002]. Additionally, Schwogler discloses that the weather information includes current and predicted weather conditions [Fig. 4] that can be update as often as every seven minutes [Para. 0059]. Schwogler further discloses that this service could be delivered on a cable or telephony company's webpage or any major information based website [Para. 0103]. It would have been obvious to one skilled in the art at the time of the invention to incorporate the weather determination system disclosed by Schwogler to the location updating system disclosed by Kehr. The weather information can be determined and stored within the proxy server based upon the location information first determined by the Kehr system. The template could then be incorporated to include the weather information within the homepage as location information is updated. The motivation to do so is to is to provide current weather information specific to a customer's current location [Para. 0007]. This would provide further information as to the context a mobile user is currently in.

2. Regarding Claims 3 and 4, Kehr, in view of Schwogler, discloses all the limitation of Claim 1 above. Kehr further discloses that the mobile device dispatches a

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communication request and receives a communication request [Pg. 2; after incoming HTTP requests are parsed (receiving), the commands encoded in the URL are executed and the responses are sent back by SMS (dispatching) to the proxy where the server returns a document that describes the requested information].

3. Regarding Claim 5, Kehr, in view of Schwoegler, discloses all the limitation of Claim 3 above. Kehr further discloses that the communication request is a multimedia call [Pg. 2; communication from the internet is achieved by a so-called proxy server and the HTTP requests are tunneled within SMS messages (multi-media call) sent from a mobile phone attached to the proxy server].

4. Regarding Claim 6, Kehr, in view of Schwoegler, discloses all the limitation of Claim 1 above. Kehr further discloses that said information about said environmental conditions of the location of said mobile telephone device comprises communication properties [Pg. 2; returned homepage information can contain the country, the operator network (communication properties), and location information].

5. Regarding Claim 7, Kehr, in view of Schwoegler, discloses all the limitation of Claim 1 above. Kehr further discloses that the mobile device transmits the generated mobile homepage [Pgs. 2 – 3; the homepage is generated and automatically returned to the person requesting that information].

6. Regarding Claim 8, Kehr, in view of Schwoegler, discloses all the limitation of Claim 1 above. Kehr further discloses that the mobile device receives an identification of the originator of a communication attempt [Fig. 2; Pg. 2; figure shows that the

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originator of the communication attempt is displayed to the user to determine whether or not the request should be answered].

7. Regarding Claims 19 and 20, Kehr discloses a mobile telephone device comprising of a server that provides a server functionality to said mobile telephone device [Fig.1; Pg. 2; proxy server that implements many of the functionality needed for the provision of mobile users' homepages], a storage for storing at least one homepage on said mobile telephone device [Pg. 2 – 3; homepage is implemented inside a SIM, which has computing power and memory, inside the mobile device], characterized by a processor configured to determine information about environmental conditions of said mobile telephone device and to adapt said homepage according to said determined information about said environmental conditions of said mobile telephone device [Pgs. 2 – 3; homepages are dynamically adapted to the environment a mobile user is currently in such as location (country, network, area) and text configuration notifying the new and updated (evaluating environment information with different environment information) status of the user or the mobile device].

Kehr further discloses that the homepage is constructed from a template that uses information returned by the mobile phone to set variables and for template substitution [Pg. 3].

Kehr, however, does not specifically disclose that the environmental conditions also indicate actual weather conditions of the location of a mobile telephone device.

Schwoegler discloses a system and method of providing individualized, location specific weather information to subscribers on wireless mobile devices [Para. 0002].

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Additionally, Schwoegler discloses that the weather information includes current and predicted weather conditions [Fig. 4] that can be update as often as every seven minutes [Para. 0059]. Schwoegler further discloses that this service could be delivered on a cable or telephony company's webpage or any major information based website [Para. 0103]. It would have been obvious to one skilled in the art at the time of the invention to incorporate the weather determination system disclosed by Schwoegler to the location updating system disclosed by Kehr. The weather information can be determined and stored within the proxy server based upon the location information first determined by the Kehr system. The template could then be incorporated to include the weather information within the homepage as location information is updated. The motivation to do so is to provide current weather information specific to a customer's current location [Para. 0007]. This would provide further information as to the context a mobile user is currently in.

8. Regarding Claims 21, Kehr, in view of Schwoegler, discloses all the limitation of Claim 19 above. Kehr further discloses that the mobile telephone device has a processor configured to connect said mobile telephone to a server, and configured to transfer the contents of a mobile homepage of said mobile telephone device to said server [Pg. 3; each user has the ability to upload the homepage to the proxy server].

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kehr, in view of Schwoegler, in further view of U.S. Appl. 2002/0180579 A1, filed by Tatsuji Nagaoka et al. (hereinafter referenced as "Nagaoka").

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9. Regarding Claims 9 and 10, Kehr, in view of Schwoegler, discloses all the limitations of Claim 6 as stated above. Neither Kehr nor Schwoegler, however, specifically disclose that the communications properties comprise of information about a communication connection or communication state of the mobile telephone.

Nagaoka discloses the use of stored communication capacity information to determine how to display the requested service onto the mobile device: the maximum communication speed, display capacity, and communication standard associated with the corresponding model of the mobile telephone [Pg. 5, Para. 0085; Pg. 7, Para. 0133]. It would be obvious to one skilled in the art to incorporate the teachings of Nagaoka with Kehr and Schwoegler since the communication speed and other properties of the mobile device will determine how much homepage information can be stored within the mobile device and the speed in which this information can be delivered to a request of this information. The communication capacity information of a particular mobile device can determine how the homepage is delivered from the mobile device, which can be used to determine possible solutions for low bandwidth or memory size that may lower the quality of service in supplying the homepage.

Claims 11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kehr, in view of Schwoegler, in further view of U.S. Patent 6,496,949 B1, invented by Dimitri Kanevsky et al. (hereinafter referenced as “Kanevsky”).

10. Regarding Claims 11 and 22, Kehr, in view of Schwoegler, discloses all the limitations of Claims 1 and 21 as stated above. Kehr further discloses that the mobile telephone device can download the contents of a mobile homepage of said mobile

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telephone device, storing said downloaded mobile homepage on a server, said server containing a homepage, thereby automatically updating said homepage on said server according to said mobile homepage of said mobile telephone device [Pg. 3; each user has the ability to upload the homepage to the proxy server].

Neither Kehr nor Schwoegler, however, specifically disclose that downloading is initiated when it is detected that the attainability of the mobile device is expected to be reduced.

Kanevsky discloses an emergency backup system for backing up data on one or more computer located in an identified danger zone where a remote sensor sends a signal to the “endangered” computers to download data when it detects the occurrence of an emergency condition [Abstract; Col. 2, Lines 27-49]. Kanevsky further discloses that this system can be implemented within a wireless network and a PDA (Abstract). It would be obvious to one skilled in the art to incorporate the teaching of Kanevsky with Kehr and Schwoegler due to the instability or the availability of network devices. When a wireless device is used to directly response to requests for information, downloading that information to another storage device, whenever there are issues regarding the availability of the wireless device, allows the requested information to be available if the wireless device is not. Backing up the data also allows retrieval of that information by the wireless device if any information is lost.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kehr, in view of Schwoegler, in further view of U.S. Appl. 2002/0188887 A1, invented by Kenneth Largman et al. (hereinafter referenced as “Largman”).

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11. Regarding Claim 13, Kehr, in view of Schwoegler, discloses all the limitations of Claim 1 as stated above. Neither Kehr nor Schwoegler, however, specifically disclose that when the mobile device is not connectable, the communication request is rerouted to another device to retrieve that request.

Largman discloses an emergency startup system that switches to a separate data storing device within the system when the primary device is not available [Pg. 6, Para. 0128]. It would be obvious to one skilled in the art to incorporate the teaching of Largman with Kehr and Schwoegler due to the instability of wireless signals. When a wireless device is used to directly response to requests for information, alternative destinations to retrieve the required information if the wireless device is unavailable will provide consistent service to those requesting it.

Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kehr, in view of Schwoegler, in further view of U.S. Patent 5,956,487, invented by Chandrasekar Venkatraman (hereinafter referenced as “Venkatraman”).

12. Regarding Claim 14, Kehr, in view of Schwoegler, discloses all the limitations of Claim 1 as stated above. Neither Kehr nor Schwoegler, however, specifically disclose that the homepage is hypertext markup language homepage or extensible hypertext markup language.

Venkatraman discloses the use of HTML to create a webpage [Col. 3, Lines 29-30]. It would have been obvious to one skilled in the art at the time the application was filed to create the homepage was an HTML file. HTML allows the homepage to contain

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text, images, multimedia files, forms, and tables that are supported by HTML protocols [Col. 3, Lines 39-41]. The various object types that are supported by HTML allow the user to customize the homepage with more than simple text.

13. Regarding Claim 16, Kehr, in view of Schwoegler, discloses all the limitations of Claim 1 as stated above. Neither Kehr nor Schwoegler, however, specifically disclose of a software tool, computer program code, or a computer program product stored in a computer readable medium comprising of program code means for carrying out the steps of automatically adapting the contents of a mobile homepage when the program is run on a computer, a network device, or a mobile telephone device.

Venkatraman discloses that the web server functionality of a device includes software executed by a processor to serve the HTTP protocols commands and generate the HTML formatted files [Col. 4, Lines 51-53]. Venkatraman also discloses that the device includes a web server that provides web server functions [Fig. 1a; Col. 3, Lines 5-16] and that the communication mechanisms can include local area networks, cellular telephone links, serial communication links, or a direct connection to the internet [Col. 3, Lines 64 – Col. 4, Lines 4]. Furthermore, Venkatraman discloses that the device comprises of a processor, memory, device-specific hardware, and input/output circuitry and the firmware or software is stored in the available memory [Fig. 1b; Col. 4, Lines 5-8 and 37-41]. It would have been obvious to one skilled in the art at the time the application was filed that to create and modify a homepage requires that software or computer code is used to process the web server functionality necessary. Furthermore, it is also obvious to one skilled in the art that the software program is stored on a

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computer readable medium within the device. Software or computer code is necessary for a processor to determine how to process certain inputs and produce certain outputs within a communication system. Storing the software in a computer readable medium allows the processor to perform other its functions continuously without user input.

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 16 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

14. Regarding Claim 16, in view of Applicant's specification, the medium is not limited solely to tangible embodiments. The specification does not define a computer readable storage medium and is, therefore, subject to the broadest reasonable interpretation applicable within the art. The claimed subject matter, given the broadest reasonable interpretation, may be a carrier wave comprising of instructions and is, therefore, non-statutory.

The United States Patent and Trademark Office (USPTO) is obliged to give claims their broadest reasonable interpretation consistent with the specification during proceedings before the USPTO. *See In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989) (during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow). The broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such

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variations) typically covers forms of non-transitory tangible media and transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent. See MPEP 2111.01.

When the broadest reasonable interpretation of a claim covers a signal *per se*, the claim must be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter. See *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and *Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. § 101*, Aug. 24, 2009; p. 2.

(10) Response to Argument

The Applicant argued:

- a) Regarding Claims 1 – 8, 11, 19 – 21, 25, and 26, the combination of Kehr and Schwoegler does not disclose or suggest of determining information about actual weather conditions of the location of the mobile telephone device.
- b) Regarding Claims 9 and 10, the cited references do not disclose or suggest of determining information about actual weather conditions of the location of the mobile telephone device.
- c) Regarding Claims 11 and 22, the cited references do not disclose or suggest of determining information about actual weather conditions of the location of the mobile telephone device.

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d) Regarding Claim 13, the cited references do not disclose or suggest of determining information about actual weather conditions of the location of the mobile telephone device.

e) Regarding Claims 14 and 16, the cited references do not disclose or suggest of determining information about actual weather conditions of the location of the mobile telephone device.

I. With regards to a), the Applicant argued that the pending claim limitations require that “there must be an automatic determination of actual weather conditions of a location of a mobile telephone device and there must be an automatic adaptation of a mobile homepage in accordance with that determined information [See Appeal Brief Pg. 5, 3rd Para.].

More specifically, the Applicant argues that since the teachings of Schwoegler discloses of downloading information from a website or server to the mobile telephone device, Schwoegler does not teach of “automatically” determining information about environmental conditions of the mobile device [See Appeal Brief, Pg. 6, 2nd Para.]. The Applicant uses the rationale that since there is an “automatic” determination, no downloading is necessary [*Id.*]. Following this rationale, the Applicant further alleges that the “mobile telephone comprises elements capable of sensing the environment in which the mobile telephone is located and consequently determines the ‘actual’ weather conditions **at that location**, rather than a general weather forecast...downloaded from the Internet” [*Id.* (emphasis added by Applicant)].

The Examiner restates the arguments presented in the Office Action mailed on August 4, 2009. The Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPTQ2d 1057 (Fed. Cir. 1993). The Applicant is further reminded that the pending claims must be "given the broadest reasonable interpretation consistent with the specification" [*In re Prater*, 162 USPQ 541 (CCPA 1969)] and "consistent with the interpretation that those skilled in the art would reach" [*In re Cortright*, 49 USPQ2d 1464 (Fed. Cir. 1999)].

The Applicant argues that this claim interpretation is implicit in the recitation of **"automatically determining** information about environmental conditions indicating **actual weather conditions of a location of a mobile telephone device**, and **automatically adapting a mobile homepage in accordance with said determined information** about said environmental conditions indicating actual weather conditions of the location of said mobile telephone device" [See Appeal Brief, Pg. 6, 3rd Para.].

The Examiner maintains that the claims are to be interpreted without reading limitations that are not recited in the claim itself [See MPEP 2106]. The currently presented claims do not contain language stating that the mobile phone "sens[es] the environment in which the device is located to determine the actual weather conditions for the location of the mobile device" [*Id.*]. The fact that the claim language does not recite such limitations is acknowledged by the Applicant [*Id.*]. Nothing within the claim language itself supports the rationale used by the Applicant to distinguish the claims over the teachings of the prior art.

Additionally, the claim language also does not preclude the “downloading” of environmental data from the Internet. Again, the Applicant requests that the Office uses an implicit rational that “automatically determining” requires that the mobile device must be sensing such information at that location [See Appeal Brief Pg. 6, 2nd Para.]. The term “automatic” generally requires that certain steps are performed without direct user interaction. The term “automatic” does not expressly or implicitly require that the mobile phone actually senses the environmental conditions around the mobile phone as the Applicant argues. Not only does the Applicant's interpretation improperly defines the term “automatic” differently from its ordinary meaning, but also implies additional limitations within the claim language that are clearly not recited.

Furthermore, the cited passage (Pg. 10, lines 20-22 of the specification) does not even support this implied function. The passage merely states that “[m]ore sophisticated mobile terminal devices may further add information about the location of the mobile phone, or can comprise information about the environment like temperature, humidity and atmospheric pressure.” The passage does not state how the mobile device actual obtains weather information. There is nothing implicit within the specification or the state of mobile phone technology at the time the invention was created to suggest that the mobile phone senses the environmental conditions of the specific location of the mobile device. Nothing related to “sensing” or “reading” weather conditions using only the mobile phone are found within the specification. The Applicant is requesting the Office to construe the claims with limitations that are not disclosed within the specification itself.

Finally, the Applicant argues that no weather information is downloaded from a service or other device to obtain weather information regarding the location of the mobile phone [See Appeal Brief, Pg. 7, 4th Para.]. However, the currently presented claims do not contain language specifying such a limitation. Also, the specification does not support such an implicit function for the mobile device. The Applicant restates that the feature of "automatically determining...actual weather conditions" implies no need of downloading the information [*Id.*]. The claim language does not preclude the downloading of environmental information from another location as suggested by the Applicant. The feature of "automatically determining...actual weather conditions" can clearly be interpreted as gathering or receiving that information from an external source, such as the Internet, without the user direct user input.

The Applicant further argues that Claim 19 specifies that since the mobile telephone device comprises of a server and a processor to determine information about environmental conditions, it would have been clear to those of ordinary skill in the art that no downloading of information is necessary [See Appeal Brief, Pg. 8, 3rd Para.]. Again, the Applicant requests that the claims be interpreted with implied functionality. Claim 19 does not even include the term "automatically" which clearly indicates that the functionality of the mobile telephone can be implemented with direct user input. For example, an invention where the user of the phone opens a web browser and inputs location information to obtain weather conditions for that location will read on Claim 19.

Both Kehr and Schwoegler disclose of mobile telephone devices that automatically perform functions to retrieve and gather information. In Kehr, the mobile

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phone automatically responds to requests for the current location on the phone [Pg. 2].

While Schwoegler discloses weather information can be pushed to the mobile device so there is no need for the user to interact with the phone to get weather information [See Para. 0101]. It is clear that t both references clearly indicate functionality that is "automatic" or without user interaction.

II. With regards to b), the Applicant restates the arguments presented for Claims 1 and 19 above. The Examiner restates the arguments in Section I above.

III. With regards to c), the Applicant restates the arguments presented for Claims 1 and 19 above. The Examiner restates the arguments in Section I above.

IV. With regards to d), the Applicant restates the arguments presented for Claims 1 and 19 above. The Examiner restates the arguments in Section I above.

V. With regards to e), the Applicant restates the arguments presented for Claims 1 and 19 above. The Examiner restates the arguments in Section I above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Tae K. Kim/

Tae K. Kim, Examiner AU 2453

May 12, 2010

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A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Jack Harvey/

Director, Technology Center 2400

Conferees:

Joseph Thomas

/Joseph Thomas/

Supervisory Patent Examiner, Art Unit 2453

Philip Chea

/Philip J Chea/

Primary Examiner, Art Unit 2453